DAVID STANTON

IBLA 96-72 Decided March 26, 1998

Appeal from a decision of the District Manager, Milwaukee District Office, Eastern States Office, Bureau of Land Management, ordering the removal of unauthorized property on public land. MNES 045422.

Affirmed.

1. Trespass: Generally

> The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary of the Interior is unlawful and prohibited. The applicable regulation provides that any use, occupancy, or development of the public lands, other than casual use without authorization shall be considered a trespass.

APPEARANCES: David Stanton, pro se.

OPINION BY ADMINISTRATIVE JUDGE PRICE

David Stanton has appealed the September 29, 1995, Decision of the District Manager, Milwaukee District Office (MDO), Eastern States Office, Bureau of Land Management (BLM), ordering Stanton to remove unauthorized property on public land in sec. 4, T. 62 N., R. 17 W., Tract No. 37, Fourth Principal Meridian, Minnesota. Stanton was given until November 3, 1995, to remove a wood-frame cabin, woodshed, dock, and personal property in the cabin and outbuilding. He was also warned that after November 3, 1995, the Government would remove and hold the property at his expense and that he could be liable for trespass penalties.

The land in question is a small island in Lake Vermilion, St. Louis County, that comprises 0.18 acres. The island is situated in sec. 4, T. 62 N., R. 17 W., Tract No. 37, Fourth Principal Meridian, Minnesota. According to Stanton, his grandparents selected the island as their fishing headquarters early in this century and built a cabin there in 1921.

He states that his grandmother "gave" him the property in the 1950's and that he and his mother tried to pay county taxes on the island on three occasions, but were told that there was no record of the existence of the property.

On August 10, 1992, Stanton filed a class 1 color-of-title application to purchase the land pursuant to the Act of December 22, 1928, 45 Stat. 1069, as amended by the Act of July 28, 1953, 67 Stat. 227, 43 U.S.C. §§ 1068 and 1068(a) and (b) (1994). The application was rejected by BLM on November 4, 1993, because Stanton failed to meet the qualifications for a class 1 claim. More particularly, BLM determined that Stanton could not produce any instrument purporting to convey the island through which he traced his chain of title and that he had acquired the land with knowledge that it belonged to the United States, as evidenced by his statements describing his attempts to purchase the island from or through the county during the years 1955 to 1960. Stanton appealed that Decision to this Board, which was docketed as IBLA 94-296. The Board ultimately dismissed the appeal by Order dated March 23, 1994, because Stanton failed to submit a statement of reasons (SOR). As a result, the BLM Decision rejecting his color-of-title application became final for the Department and is not subject to further review.

On May 25, 1994, the MDO issued a Trespass Notice to Stanton informing him that his continued occupancy of the land and maintenance of structures on the land after this Board's Order of March 23, 1994, was a violation of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1701 (1994) and 43 C.F.R. § 2920.1-2. That Regulation, 43 C.F.R. § 2920.1-2(a), states: "Any use, occupancy, or development of the public lands, other than casual use * * * without authorization * * * shall be considered a trespass." Stanton was given 90 days from receipt of the Notice to cease the alleged trespass. By letter to Stanton dated December 8, 1994, the MDO noted that Stanton had not replied to the Trespass Notice and that an inspection of the property in late August had revealed that the cabin, dock, and woodshed remained on the island. The MDO requested that Stanton remove all his personal property and the cabin, dock, and woodshed from the island by March 31, 1995, and warned that failure to remove the property would require the initiation of formal trespass proceedings which could result in trespass penalties and fines.

Stanton replied to the MDO by letter dated February 6, 1995, asserting once again that his family had used the land since 1921 and requesting that he be permitted to continue using the land. The MDO responded to Stanton on March 9, 1995, again reminding him of the March 31, 1995, deadline for removing his personal property and warning him of the consequences for failing to remove the property. On March 28, 1995, BLM extended the deadline by 90 days at Stanton's request, but also reiterated its warning about the risk of penalties in a formal trespass action. Finally, on September 29, 1995, MDO issued its Decision that the cabin,

woodshed, dock and other personal property on the island constituted unlawful trespass and must be removed by November 3, 1995. This appeal followed.

In his SOR, Stanton reiterates the history of his family's use of the island, as described above. He states that he has exhausted all options to acquire the land under the Color-of-Title Act and FLPMA, and seeks, in essence, equitable relief from the Decision from this Board. He asks this Board to consider favorably the fact that his family has occupied the land for 75 years and suggests that there is no evidence that public objectives or values would be materially compromised if the land were sold to him. Stanton claims that the other residents of Lake Vermilion have no objection to his acquiring title. Finally, Stanton requests a life estate in the island if no sale is possible.

[1] Section 303(g) of FLPMA provides that "[t]he use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary [of the Interior] * * * is unlawful and prohibited." 43 U.S.C. § 1733(g) (1994). Implementing regulations provide that "[a]ny use, occupancy, or development of the public lands, other than casual use * * * without authorization under the procedures in § 2920.1-1 of this title, shall be considered a trespass." 43 C.F.R. § 2920.1-2(a). The cited regulation, 43 C.F.R. § 2920.1-1, provides that any use not specifically authorized by other statutes or regulations and not expressly prohibited may be authorized, and prescribes the types of authorizations to be used, one of which is a lease for a period of years. We note that although there is no provision for a life estate per se, a permit or a lease for the balance of Appellant's lifetime would achieve the same purpose as a life estate. See also BLM Manual § 2920.1A, which authorizes occupancy permits and leases.

The Decision at hand concerns only the order to remove unauthorized property. Stanton has not asserted that his use of the land is authorized, and there is no evidence in the case record showing that he or his predecessors ever were authorized to use the land. Departmental regulation 43 C.F.R. § 2920.1-2(a) provides that any use other than casual use without authorization shall be considered a trespass. The presence of permanent structures clearly shows that Stanton's use was not casual, and therefore the continued presence of his property on the island without authorization under 43 C.F.R. § 2920.1-1 constitutes a trespass. We thus find no error in BLM's Decision ordering the property removed, and accordingly, it must be affirmed. 1/

1/ Stanton may wish to formally pursue the possibility of lease with BLM, and any resulting decision would be appealable to this Board. However, this Board has no authority in the circumstances here presented to order the relief requested, such authority being vested in BLM. See sections 301 and 302(b) of FLPMA, 43 U.S.C. §§ 1731 and 1732(b) (1994).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Decision appealed from is affirmed.

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T. Britt Price
Administrative Judge

I concur:

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Franklin D. Arness
Administrative Judge